

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
JOHN LINDBACK
DIRECTOR
141 STATE CAPITOL
SALEM, OREGON 97310-0722
ELECTIONS—(503) 986-1518

BEFORE THE SECRETARY OF STATE
OF THE
STATE OF OREGON

In the matter of a Late Contribution and Expenditure Report)
by Friends of Richard Devlin, Richard Devlin,) Final Order
Candidate/Treasurer, for the Second Supplement to the)
Second Pre-Election for the May 16, 2006, Primary Election) Case No. L9094

March 9, 2007

Friends of Richard Devlin (001670)
Richard Devlin, Candidate/Treasurer
PO Box 2961
Tualatin, OR 97062

Dear Senator Devlin:

This is a Final Order issued by the Secretary of State (secretary) for your failure to file a timely second supplement to the second pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

On November 30, 2006, the secretary notified Friends of Richard Devlin (committee), pursuant to ORS 260.232(2), that it had failed to file the report and that the secretary may impose a civil penalty. An opportunity for a hearing was provided in that notice. The committee submitted written testimony in the form of a notarized statement in lieu of a personal appearance at a public hearing. Accordingly, after consideration of the applicable law and evidence presented, Jennifer Hertel, Hearings Officer with the Elections Division, is entering the following Order.

FINDINGS OF FACT

1. The committee's Statement of Organization (SEL 220), applicable during the reporting period, was filed with the secretary on August 29, 2005. The statement reported Richard Devlin, the candidate, as the treasurer and PO Box 2961, Tualatin, OR 97062 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a second supplement to the second pre-election report with the secretary on May 12, 2006, because it received a contribution exceeding \$500 from a single source between May 1, 2006, and May 11, 2006.
3. The committee reported the contribution required to be on the second supplement to the second pre-election (\$1,000.00 from Oregon Medical Association PAC on May 10, 2006) on its post-election report filed on June 7, 2006, which is 17 business days after the second supplement to the second pre-election report was due.

4. On November 30, 2006, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the candidate/treasurer at the above-referenced address. The notice proposed a civil penalty of \$100.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was returned unclaimed and the post office indicated it gave first notice on December 1, 2006.
5. On December 20, 2006, the secretary received a notarized letter from Richard Devlin in lieu of a public hearing. Also on this date, an amendment to the committee's post-election report was filed, changing the date of the contribution to May 16, 2006.
6. The letter—attached as Exhibit A—was reviewed, considered, and made part of the record.
7. The secretary has record of no previous late filings during the two-year period beginning September 15, 2005.

ULTIMATE FINDINGS OF FACT

Richard Devlin, Candidate / Treasurer, filed a timely second supplement to the second pre-election contribution and expenditure report for the May 16, 2006, Primary Election.

CONCLUSIONS OF LAW

Candidate/Treasurer Richard Devlin's timely filing of the second supplement to the second pre-election contribution and expenditure report for the May 16, 2006, Primary Election did not violate ORS 260.058.

OPINION

After reviewing and considering the evidence and information on file in this office, the hearings officer finds that there has not been a violation of Oregon election law. The testimony explains that the date was incorrectly recorded on the post-election contribution and expenditure report. The date reported was the date the check was written (May 10, 2006), not the date that the committee received the check (May 16, 2006).

The date a contribution is received is the date the contribution is received in the committee's physical custody, not the date the check was written (page 64, *2006 Campaign Finance Manual*). An amendment to the committee's post-election report was filed on December 20, 2006, which amended the receipt date of the \$1,000 contribution from Oregon Medical Association PAC from May 10, 2006, to May 16, 2006. Since the contribution was not received during the accounting period for the supplement to the second pre-election report (May 1 to May 11, 2006), it was not required to be filed on a second supplement to the second pre-election.

ORDER

It is ordered that no penalty be assessed because there is no violation of election law.

RIGHT TO JUDICIAL REVIEW

You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served to you. Because this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

Jennifer Hertel, Compliance Specialist

DATE of Service: _____